

OPEN MEETING ITEM



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COMMISSIONERS
MIKE GLEASON - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

ORIGINAL

DATE: SEPTEMBER 26, 2008

Arizona Corporation Commission

DOCKETED

DOCKET NO: W-02304A-08-0149

SEP 26 2008

TO ALL PARTIES:



Enclosed please find the recommendation of Administrative Law Judge Belinda A. Martin. The recommendation has been filed in the form of an Opinion and Order on:

COMMUNITY WATER COMPANY OF GREEN VALLEY (CC&N EXTENSION)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

OCTOBER 6, 2008

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

OCTOBER 15, 2008 AND OCTOBER 16, 2008

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

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AZ CORP COMMISSION
DOCKET CONTROL

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MIKE GLEASON, Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 KRISTIN K. MAYES
7 GARY PIERCE

8 IN THE MATTER OF THE APPLICATION OF
9 COMMUNITY WATER COMPANY OF GREEN
10 VALLEY FOR AN EXTENSION OF ITS
11 EXISTING CERTIFICATE OF CONVENIENCE
12 AND NECESSITY FOR WATER SERVICE.

DOCKET NO. W-02304A-08-0149

DECISION NO. _____

OPINION AND ORDER

10 DATE OF HEARING:

June 26, 2008

11 PLACE OF HEARING:

Tucson, Arizona

12 ADMINISTRATIVE LAW JUDGE:

Belinda A. Martin

13 APPEARANCES:

Mr. William D. Baker, Ellis & Baker, on
behalf of Community Water Company of
Green Valley; and

Mr. Kevin Torrey, Staff Attorney, Legal
Division, on behalf of the Utilities
Division of the Arizona Corporation
Commission.

17 **BY THE COMMISSION:**

18 * * * * *

19 Having considered the entire record herein and being fully advised in the premises, the
20 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

21 FINDINGS OF FACT

22
23 1. On March 11, 2008, Community Water Company of Green Valley ("CWCGV") filed
24 an Application to Extend its Certificate of Convenience and Necessity ("CC&N" or "Certificate") to
25 provide water service to Freeport-McMoRan Sierrita, Inc.'s ("Freeport") administrative offices in an
26 unincorporated portion of Pima County ("Application").

27 2. On March 19, 2008, CWCGV filed an additional exhibit to its Application.

28 3. On April 11, 2008, Staff notified CWCGV that its Application was sufficient.

1 4. By Procedural Order dated April 17, 2008, the matter was set for hearing at the
2 Commission's offices in Tucson, Arizona, and procedural guidelines and deadlines were established.

3 5. On May 21, 2008, CWCGV filed an affidavit certifying that it mailed Public Notice of
4 the hearing to the owner of the affected property, and that Public Notice was published in the *Green*
5 *Valley News* on May 9, 2008, and May 16, 2008.

6 6. On June 13, 2008, Staff filed its Staff Report recommending approval of the
7 Application.

8 7. On June 26, 2008, the hearing in this matter convened before a duly authorized
9 Administrative Law Judge. No members of the public appeared at the hearing to comment.¹

10 8. On July 9, 2008, CWCGV filed a late-filed exhibit relating to the clarification of
11 evidence presented at hearing regarding whether Freeport's provision of funds for construction costs
12 would be treated as advances in aid of construction ("AIAC") or contributions in aid of construction
13 ("CIAC").

14 9. On July 24, 2008, Staff filed a Supplemental Staff Report regarding the treatment of
15 construction costs.

16 10. On August 4, 2008, CWCGV filed its Response to Supplemental Staff Report.

17 11. CWCGV is an Arizona corporation, in good standing with the Commission's
18 Corporations Division, and provides water service to approximately 11,900 customers in Pima
19 County. The Commission approved CWCGV's current rates and charges in Decision No. 69205
20 (December 21, 2006).

21 12. CWCGV received a request for service in the proposed extension area from Freeport.
22 The area is not contiguous to CWCGV's existing certificated area, or to any other water company's
23 certificated area. The legal description of the proposed extension area is attached hereto as
24 Exhibit 'A'.

25 ...

26 _____
27 ¹ Although no members of the public appeared at the hearing for public comment, three members of the public filed
28 comment with the Commission generally opposing provision of water, including the use of CAP water, to Freeport-McMoRan Sierrita, Inc., for mining processes and expressing opposition to the mine itself. None of the comment filed in this docket specifically relates to the Application for extension of CWCGV's CC&N for purposes of serving Freeport-McMoRan Sierrita, Inc.'s administrative offices.

1 13. CWCGV's proposed CC&N extension area is located one-half mile from its current
2 certificated area, and measures approximately 0.16 acre, encompassing a pump station site ("Pump
3 Station Site") owned by Freeport. The water will serve Freeport's administrative offices. Mr. Norris
4 West, a witness for CWCGV, testified that the water provided to Freeport will be used for domestic
5 water-type uses, such as restrooms, drinking fountains and kitchen uses, but not for any mine
6 processes. (*Transcript of June 26, 2008, Hearing, Pages 13-15*)

7 14. Freeport is currently using water from a well system called the Canoa wells. Freeport
8 requested water service from CWCGV in order to have the water supplying the administrative offices
9 comply with Arizona water quality requirements for drinking water. The Canoa wells will be used
10 only for mining processes once CWCGV begins providing water to the Freeport administrative
11 offices. (Tr. Pg. 20)

12 15. The Company's existing water system consists of four wells producing approximately
13 7,000 gallons per minute, six storage tanks with a capacity of 5,600,000 gallons, and necessary
14 delivery infrastructure.

15 16. Staff concludes that there is adequate production and storage to serve existing
16 customers as well as the proposed extension area.

17 17. CWCGV proposes to install 322 feet of distribution mains and two 10-horse power
18 booster pumps to serve the requested CC&N extension area. Although CWCGV's certificated area is
19 not contiguous to the proposed area, the proposed area does abut a one million gallon reservoir
20 owned by CWCGV. As such, the 322 feet of distribution mains and the two pumps installed will take
21 water from the reservoir to the Pump Station Site, and then to a 25,000 gallon storage tank on
22 Freeport property for use at its administrative offices. (Tr. Pg. 8-9, 22-25)

23 18. Staff received a copy of the Arizona Department of Environmental Quality ("ADEQ")
24 Approval to Construct from CWCGV. Mr. Norris stated that the construction of the facilities is
25 substantially complete and CWCGV is waiting for final inspections and approval of construction
26 ("AOC") from ADEQ. (Tr. Pg. 19)

27 19. CWCGV's Application stated that the anticipated water use by the Freeport
28 administrative offices would be up to 49 million gallons per year. Mr. Norris testified that that

1 number was calculated by determining the full flow, maximum water use per minute, 24-hours a day.
2 Mr. Norris testified that he does not expect Freeport's actual usage to be at full flow, maximum usage
3 24 hours a day. (Tr. Pg. 17-18, 27)

4 20. CWCGV projects that the cost of the new infrastructure will be \$274,000. In its
5 Application, CWCGV stated that financing for the project would be provided by Freeport through the
6 use of AIAC. However, at hearing, the Company's witness, Arturo Gabaldon, testified that CWCGV
7 would not be refunding the construction costs to Freeport and the construction funds received from
8 Freeport would be treated as CIAC. (Tr. Pg. 34-35)

9 21. On July 9, 2008, CWCGV filed a late-filed exhibit of an Amendment to Agreement
10 222, WA#0708, between CWCGV and Freeport memorializing that the construction costs paid by
11 Freeport for those portions of plant within the CC&N which are connected to CWCGV's piping or
12 equipment, would be treated as CIAC. The Amendment to Agreement 222 also states that upon
13 termination of service, "all pumping facilities located on the Pump Station Site shall become the
14 property of [Freeport], except for lines, mains, or fittings attached or connected to [CWCGV's]
15 piping or equipment."

16 22. Staff has reviewed the proposed cost estimate and finds that it is appropriate and
17 reasonable. Staff has not made any "used and useful" determination and, therefore, no future
18 ratemaking treatment for the plant should be inferred.

19 23. Staff's witness concluded that CWCGV is a fit and proper entity to provide water
20 service and that there would be no negative financial impact to CWCGV's customer base.
21 (Tr. Pg. 54-55)

22 24. CWCGV's existing system is regulated by ADEQ under ADEQ Public Water System
23 I.D. #10-004. The Company's system has no deficiencies and ADEQ has determined that this system
24 is currently delivering water that meets water quality standards required by Arizona Administrative
25 Code, Title 18, Chapter 4.

26 25. CWCGV is located within the Tucson Active Management Area and is in compliance
27 with its reporting and conservation requirements with the Arizona Department of Water Resources.

28 ...

26. Every applicant for a CC&N and/or CC&N Extension is required to submit to the Commission evidence showing that the applicant has received the required consent, franchise or permit from the proper authority. The proposed extension area is included within the boundaries of CWCGV's present Pima County public utilities licensing agreement.

27. CWCGV has an approved Curtailment Tariff and an approved Backflow Tariff.

28. CWCGV has no outstanding compliance issues with the Commission.

29. Based on the foregoing, Staff recommends approval of CWCGV's Application.

30. Staff further recommends that CWCGV charge its authorized rates and charges in the proposed extension area.

31. Staff's recommendations are reasonable and should be adopted.

32. CWCGV provided Staff with a copy of ADEQ's ATC. We believe that it is reasonable to require the Company to file with Docket Control, as a compliance item in this docket, a copy of the ADEQ AOC for the facilities not later than June 30, 2009.

33. Further, we find that if CWCGV fails to comply with the with the time frame specified in Findings of Fact No. 32, the CC&N granted in this case be null and void, after due process.

CONCLUSIONS OF LAW

1. CWCGV is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over CWCGV and the subject matter of the Application.

3. Notice of the Application was provided in accordance with law.

4. There is a public need and necessity for water service in the proposed extension area as set forth in Exhibit 'A.'

5. CWCGV is a fit and proper entity to receive a CC&N to provide water service in the proposed extension area.

6. Staff's recommendations, as well as the additional conditions set forth in Findings of Fact Nos. 32 and 33, set forth herein are reasonable and should be adopted.

ORDER

IT IS THEREFORE ORDERED that the Application of Community Water Company of Green Valley for an extension of its Certificate of Convenience and Necessity to provide water service in Pima County, for the area described in Exhibit 'A' attached hereto, is approved.

IT IS FURTHER ORDERED that Community Water Company of Green Valley shall charge its authorized rates and charges in the extension area.

IT IS FURTHER ORDERED that Community Water Company of Green Valley shall file with Docket Control as a compliance item in this docket, a copy of the Arizona Department of Environmental Quality Approval of Construction of the facilities not later than June 30, 2009.

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1 IT IS FURTHER ORDERED that this Decision granting the requested CC&N extension be
 2 considered null and void, after due process, should Community Water Company of Green Valley fail
 3 to meet the above condition within the time specified.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
 6

7 _____ CHAIRMAN _____ COMMISSIONER
 8

9
 10 _____ COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER
 11

12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
 13 Director of the Arizona Corporation Commission, have
 14 hereunto set my hand and caused the official seal of the
 15 Commission to be affixed at the Capitol, in the City of Phoenix,
 16 this ____ day of _____, 2008.

17 _____
 18 BRIAN C. McNEIL
 19 EXECUTIVE DIRECTOR

20 DISSENT _____
 21

22 DISSENT _____
 23
 24
 25
 26
 27
 28

1 SERVICE LIST FOR:

COMMUNITY WATER COMPANY OF GREEN VALLEY

2 DOCKET NO.:

W-02304A-08-0149

3 William D. Baker, Esq.

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ARIZONA CORPORATION COMMISSION

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EXHIBIT "A"

PUMP STATION PARCEL

That part of the West half of the West half of the West half of Section 16, Township 18 South, Range 13 East, G. & S.R.M., described as follows:

COMMENCING at the Northwest corner of said Section 16, monumented with an aluminum cap pin stamped "T18E R13E SEC 8 9 17 16 RLS 29873", and from which point the Northwest corner of Section 17, Township 18 South, Range 13 East, monumented with an aluminum cap pin stamped "T18E R13E SEC 7 8, 8 17 RLS 29873", bears South 89 degrees 07 minutes 57 seconds West, 5232.60 feet ;

Thence South 64 degrees 46 minutes 55 seconds East, 732.67 feet to the Northernmost corner of that parcel of land described in Docket 9347, Page 1600, in the Office of the County Recorder of Pima County, Arizona;

Thence South 01 degrees 39 minutes 04 seconds East along said parcel, 14.39 feet;

Thence South 44 degrees 17 minutes 19 seconds West along said parcel, 39.95 feet to the Southwesterly line of the right-of-way easement for Continental Road as described in Road Proceedings No. 1669 and the POINT OF BEGINNING;

Thence South 48 degrees 43 minutes 20 seconds West along said parcel, 90.21 feet;

Thence North 41 degrees 16 minutes 40 seconds West, 79.33 feet;

Thence North 48 degrees 43 minutes 20 seconds East, 81.14 feet to a point of non-tangent curvature on said Southwesterly line of Continental Road, from which point the radius point bears South 40 degrees 06 minutes 53 seconds West;

Thence along said Southwesterly line of Continental Road, along a curve to the right, having a radius of 1095.87 feet and a central angle of 004 degrees 10 minutes 32 seconds, 79.86 feet to the POINT OF BEGINNING.

Containing 6835. square feet, or 0.157 acres, more or less.

